INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute and regulation involved	2
Statement	2
Summary of argument	5
Argument	7
I. The Administrator properly interpreted the exemption of "rates charged by any common carrier or other public utility" in Section 302 (c) as having uniform application to certain types of businesses, generally and traditionally regarded as public utilities, irrespective of variations of state or local law with respect to their characterization or legal obligations	7
II. Applying the foregoing principle, the Administrator correctly determined that warehouses as such are not public utilities within the scope of the "public utility" exemption	19
Conclusion	25
Appendix A	26
Appendix B	28
Appendix C	29

CITATIONS

Cases:	
Chicago Board of Trade v. *Johnson*, 264 U. S. 1	9
DeGanay v. *Lederer*, 250 U. S. 376	8
Eagan v. *Commissioner of Internal Revenue*, 43, F. (2d) 881	21
Jerome v. *United States*, 318 U. S. 101	9, 11
Keifer & Keifer v. *Reconstruction Finance Corporation*, 306 U. S. 381	9
Lyeth v. *Hoey*, 305 U. S. 188	9
Morgan v. *Commissioner of Internal Revenue*, 309 U. S. 78	9
Nebbia v. *New York*, 291 U. S. 502	23
Patrick Cudahy Family Company v. *Bowles*, decided by Emergency Court of Appeals, November 2, 1943	10
Pulitzer Publishing Company v. *Federal Communications Commission*, 94 F. (2d) 249	23

559505—43——1

Statutes; Page

Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. App., Supp. II, § 901 *et seq.*:
- Sec. 2 — 19
- Sec. 204 (d) — 10, 26
- Sec. 302 (c) — 5, 6, 7, 8, 10, 12, 15, 19, 20, 26

United States Warehouse Act, c. 313, 39 Stat. 486, *et seq.*, 7 U. S. C. §§ 241–273 — 21

40 Stat. 893, 10 U. S. C., § 1287 — 21

48 Stat. 1001, 19 U. S. C., § 81n — 21

49 Stat. 838, 15, U. S. C. § 79b (a) (5) — 21

52 Stat. 589, 48 U. S. C. § 315 — 21

52 Stat. 891, 11 U. S. C. §§ 577, 578 — 21

53 Stat. 48, 26 U. S. C. § 116(d) — 21

56 Stat. 765, 50 U. S. C. App. § 961 — 14, 15

State Constitution and Statutes:

Constitution of California.
- Article IV, Section 33 — 2
- Article XII, Section 23 — 2

Public Utilities Act of California:
- Sec. 2 (aa) — 2
- Sec. 2 (dd) — 2
- Sec. 2½ — 2
- Sec. 14 — 2
- Sec. 15 — 2
- Sec. 63 (a) — 2

Colorado Stat. Ann. (1935), ch. 137, Sec. 3 — 8

Miscellaneous:

Compton's *Pictured Encyclopaedia* (1942), Vol. 11, p. 384 — 24

87 Cong. Rec., November 24, 1941, 9308 — 14

88 Cong. Rec., January 7, 1942, 68 — 21

88 Cong. Rec., September 10, 1942, 7343–7346 — 15, 20

Encyclopaedia Americana, Vol. 22, pp. 778–779 — 24

Frankfurter, *The Public and Its Government* (1930), 81 — 21

General Maximum Price Regulation, Section 10, 7 F. R. 3153 — 3

Supplementary Regulation No. 11, 7 F. R. 4738 — 3

Amendment No. 1 — 3

Procedural Regulation No. 11, 7 F. R. 9390 — 15

Hearings before the Committee on Banking and Currency, U. S. Senate, on H. R. 5990, 77th Cong., 1st sess. (1941) 121–122 — 20

Hearings before the House Committee on Banking and Currency on H. R. 5479, superseded by H. R. 5990, 77th Cong., 1st sess. (1941) 626 — 14

Moody's *Manual of Public Utilities* (1942 ed.), pp. a3, a83–a91 — 25

New Century Dictionary (Vol. 2) 1423 — 24

Miscellaneous—Continued. Page

New International Encyclopaedia (1930), Vol. 19, p. 347 ... 24

Oxford *Universal English Dictionary* (1937) 1614 ... 24

Reports on Business, Census of Business; 1939, Vol. 3 ... 20

S. Rept. No. 931, 77th Cong., 2d sess. (1942), pp. 7, 16 ... 10, 20

Service Businesses, U. S. Dept. of Commerce, 16th Census (1940), p. 244 ... 20

Standard and Poor's *Trade and Security Index for* 1941 ... 24

Webster's *New International Dictionary* (2d ed., unabridged) ... 24

Winston's *Cumulative Loose-Leaf Encyclopaedia* (App.) 780 ... 24

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 112

DAVIES WAREHOUSE COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 109–144) is reported in 137 F. (2d) 201.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered May 28, 1943 (R. 145). The petition for a writ of certiorari was filed on June 21, 1943, and granted on October 11, 1943. Jurisdiction of this Court rests on Section 204 (d) of the Emergency Price Control Act of 1942, 56 Stat. 23.

QUESTION PRESENTED

Whether petitioner, a public warehouse company in California, is a "public utility" within the meaning of Section 302 (c) (2) of the Emergency Price Control Act, and hence exempt from the Administrator's authority under the Act.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Emergency Price Control Act appear in Appendix A, *infra*, pp. 26–27. The applicable provisions of the regulation involved, the General Maximum Price Regulation, appear in the Record at pp. 48–50 and 59.

STATEMENT

Petitioner is engaged as a public warehouseman in Los Angeles, California. Its business is declared by both constitution [1] and statute [2] of that state to be that of a "public utility" subject to the authority of the Railroad Commission of California. Within the Commission's authority is included the fixing of petitioner's rates and charges. Pursuant to the state statute the Railroad Commission, on May 12, 1942, authorized an increase in petitioner's charges, effective May 22, 1942. (R. 109.)

[1] Constitution of California, Article IV, Section 33; Article XII, Section 23 (R. 17–19, 109).

[2] Public Utilities Act of California, Sections 2 (aa), 2 (dd), 2½, 14, 15, 63 (a) (R. 16–17, 109).

On April 28, 1942, the Price Administrator, acting under the authority conferred upon him by the Emergency Price Control Act, issued the General Maximum Price Regulation[3] (R. 46–75) which established as maximum prices of the commodities and services governed by that Regulation the highest prices charged by each seller for the particular commodity or service during March 1942. Section 10 of that Regulation, as amended (R. 59), provided that it should not apply to such services as might be specified by supplementary regulation or amendment thereto. On June 16, 1942, the Administrator issued Supplementary Regulation No. 11[4] (R. 97), providing that the General Maximum Price Regulation should not apply to certain services, including warehousing, until July 1, 1942.

Amendment No. 1 to Supplementary Regulation No. 11 (R. 101–105), issued June 23, 1942, exempted certain services from the operation of the General Maximum Price Regulation effective July 1, 1942. Of the businesses whose services were excepted by the amendment, the only ones partaking of the nature of a common carrier or other public utility were the following:

> (21) Electricity (companies furnishing, as public utilities), rates charged by
>
> * * * * *

[3] 7 F. R. 3153.
[4] 7 F. R. 4738.

(25) Express companies and freight forwarders offering their services to the general public as common carriers, rates charged by

* * * * *

(30) Gas (companies supplying, as public utilities through mains), rates charged by

* * * * *

(38) Light, heat, or power (companies furnishing, as public utilities), rates charged by

* * * * *

(61) Telephone services, rates charged for

(62) Telegraph services, rates charged for

* * * * *

(68) Transportation of commodities by persons offering their services to the general public as common carriers by rail, water, motor, pipe line, or other means of conveyances, rates charged for; Provided, however, that charges for storage and warehousing and all other services incident thereto by any person shall not be excluded from the General Maximum Price Regulation.

(69) Transportation of persons, rates charged for

* * * * *

(73) Water (companies supplying, to urban areas as public utilities), rates charged by

* * * * * *

Among the services not excepted were "commercial storage and warehousing and services incident thereto" (R. 97). The effect of the General Maximum Price Regulation and Supplementary Regulation No. 11, as amended, was to prohibit petitioner, after July 1, 1942, from charging the increased rates which had been approved by the California Railroad Commission. Petitioner filed a timely protest to the General Maximum Price Regulation asserting itself to be a public utility within the meaning of Section 302 (c) of the Act, and, therefore, exempt from the Administrator's authority (R. 15–40). The protest was denied by the Administrator (R. 41–45) and petitioner filed a complaint in the Emergency Court of Appeals (R. 1–12). That complaint was dismissed, the court holding that petitioner was not a public utility within the meaning of Section 302 (c) (2) of the Act (R. 109–145).

SUMMARY OF ARGUMENT

I

The Administrator properly interpreted the exemption of "rates charged by any common carrier or other public utility" in Section 302 (c) of the Act as having uniform application to certain types

559505—43——2

of businesses, generally and traditionally regarded as public utilities, irrespective of variations of state or local law with respect to their characterization or legal obligations. This construction follows the general rule that the content of descriptive terms in federal statutes should not be varied by local law, and is supported by the provisions of the statute and its legislative history affirmatively indicating that Congress recognized the importance to the price-control program of nation-wide uniformity of authority and consistency in administration. The practical necessities of the price-control program also favor the construction adopted by the Administrator. By way of contrast, the tests offered by petitioner tend toward confusion and uncertainty in the administration of the program and accord less closely with the statutory provisions and the Congressional intention. Under those tests the authority to regulate each type of enterprise would vary in accordance with local circumstance and local law. Finally, the Administrator's interpretation is supported by the well-settled rule that statutory exemptions should be narrowly construed.

II

The Administrator correctly determined that warehouses are not within the group of businesses generally and traditionally regarded as public utilities, within the meaning of Section 302 (c) of the Act. This is demonstrated by the particular

section of which the exemption forms a part, as well as by the general understanding of the term "public utility." Section 302 (c) of the statute expressly subjects "storage" services to regulation. In referring specifically to storage services, Congress clearly intended to include warehouse rates within the scope of the Administrator's authority. Congressional usage of the term "public utility" in this statute to include certain traditional public utilities, but not to include warehouses, is no different from its understanding in other federal statutes. It also accords with the generally accepted understanding of the term "public utility" as indicated by the statutory definitions of the vast majority of state legislatures, by the opinions of this and other Federal courts and by the usage of the business community.

ARGUMENT

I

THE ADMINISTRATOR PROPERLY INTERPRETED THE EXEMPTION OF "RATES CHARGED BY ANY COMMON CARRIER OR OTHER PUBLIC UTILITY" IN SECTION 302 (C) AS HAVING UNIFORM APPLICATION TO CERTAIN TYPES OF BUSINESSES, GENERALLY AND TRADITIONALLY REGARDED AS PUBLIC UTILITIES, IRRESPECTIVE OF VARIATIONS OF STATE OR LOCAL LAW WITH RESPECT TO THEIR CHARACTERIZATION OR LEGAL OBLIGATIONS

The Office of Price Administration, throughout its administration of the Emergency Price Control

Act, has consistently interpreted the "public utility" exemption of Section 302 (c)[5] as referring to a group of businesses which have been traditionally regarded as public utilities and which are generally suggested when the term "public utility" is used. Thus, the Administrator has taken the words "public utility" in their "ordinary and usual sense, and with the meaning commonly attributable to them," *DeGanay* v. *Lederer*, 250 U. S. 376, 381, and has avoided both refinements of legal analysis and the variations of local law[6] which, as will be seen, are necessarily involved in the use of the term "public utility" as a word of art, after the fashion suggested by the petitioner or elaborated by the dissenting opinion in the court below. We believe that the interpretation adopted by the Administrator is preferable to those suggested by the petitioner or by the dissenting opinion in that it more closely accords with general principles of statutory interpretation, with the legislative history of the Emergency Price Control Act, and with the larger purposes and administrative necessities of the Act.

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[5] *Infra*, p. 26.

[6] See the illustrations of some of the businesses designated by state statutes as public utilities and regulated as such, collected in the opinion of the court below (R. 112). They range from "abattoirs" to "wells." See particularly Colorado Stat. Ann. (1935), Ch. 137, Section 3, defining as a public utility "every corporation or person now or hereafter declared by law to be affected with a public interest."

This Court has frequently given expression and application to the general rule that descriptive terms in federal statutes, in the absence of plain indication to the contrary, should be accorded a general and uniform interpretation and should not be made dependent upon varying state laws in their application. *Jerome* v. *United States*, 318 U. S. 101, 104; *Morgan* v. *Commissioner of Internal Revenue*, 309 U. S. 78; *Lyeth* v. *Hoey*, 305 U. S. 188; *Chicago Board of Trade* v. *Johnson*, 264 U. S. 1. It is particularly appropriate that this general rule of construction be followed in the interpretation of the Emergency Price Control Act, a statute enacted under the war power of Congress and designed to meet a problem nation-wide both in its causes and in its effects. It is certainly reasonable to assume that if Congress had intended to condition the authority to cope with problems of wartime inflation upon variations of local law, it would have expressly so provided. *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 395. The language of the Act contains no hint that Congress so intended.

There are, on the contrary, affirmative indications in the statute that Congress recognized the importance to price control of national uniformity of authority and consistency in administration. Largely to avoid the unfortunate practical effects of conflicting judicial decisions in different parts

of the country, the Emergency Court of Appeals was established with exclusive jurisdiction, subject only to review by this Court, to determine the validity of price or rent regulations or orders.[7] Thus Congress recognized the administrative impracticability of applying price regulations to one part of an industry while another part of the same industry is even temporarily free from regulation. It is also worthy of note that all the other exemptions provided for in Section 302 (c) apply uniformly throughout the country, irrespective of variations in local law.[8] The "public utility" exemption should not be given an interpretation inconsistent with this basic statutory pattern, merely because the term "public utility", for reasons foreign to price control, is sometimes used as a word of art with connotations more subtle and variable than its ordinary meaning.

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[7] Emergency Price Control Act, Section 204 (d), 50 U. S. C. App., Supp. II, § 924 (d), *infra*, p. 26. In explaining this provision, the Report of the Senate Committee on Banking and Currency states, "the Emergency Court is established to avoid the confusion which would result from conflicting decisions in different circuits on the same regulations." Sen. Rep. No. 931, 77th Cong., 2d Sess. (1942), pp. 7, 16.

[8] Cf. *Patrick Cudahy Family Company* v. *Bowles*, decided by the Emergency Court of Appeals, November 2, 1943, where the court, approving the Administrator's determination that a provision of the maximum rent regulations should have a uniform interpretation throughout the country, rejected the complainant's contention that the meaning of the phrase "for a term commencing on or prior to" in the regulations should vary with the laws of particular states.

[9] It is interesting to note that by Section 302 (c) (4) the rates of all radio-broadcasting stations (whether or not sub-

The petitioner suggests, however, that its interpretation likewise calls for a general and uniform application of the exemption clause, because in any state where a business is regulated as a public utility it will be exempt from the Emergency Price Control Act, whereas in every state where the same business is not so regulated it will be subject to the Price Control Act. This is uniformity only in the sense of abstract definition. It is not uniformity in the sense of practical application as contemplated by Congress. Cf. *Jerome* v. *United States, supra.* As a practical matter, the Administrator's interpretation results in each type of business being subject to or exempt from price control irrespective of where it is situated or how it is characterized or regulated by state, municipal, or other local law. Under the petitioner's interpretation, as well as that elaborated by Judge Vinson, the authority to regulate each type of enterprise—warehouses, for example—would vary in accordance with local circumstance and local law. But price control is an intensely practical matter; it is concerned with the economic functions which a business performs, not with its legal ramifications. Thus the unjustified economic preferences and regional dislocations which may result from

ject to state regulation) are exempted from the Administrator's authority. However, since such enterprises are regulated in several states (*e. g.*, Michigan, Nevada, and West Virginia; see Appendix B, *infra*) as "public utilities", under petitioner's test they would also be exempt under the "public utility" provision of the statute.

subjection of one part of an industry to price control while its economic counterpart and perhaps its competitor is not so subject, are not less objectionable merely because one part of the industry is accorded "public utility" status and the other is not.

Petitioner has also argued that its interpretation will best serve the general purposes of the statute because under it those enterprises which are subject to adequate price regulation under some other law will not be subject to the Emergency Price Control Act, whereas even public utility enterprises which are not subject to other price regulation will be subject to the Administrator's authority under the Act. In the first place, however, there is nothing in the statute to suggest that Congress intended subjection to other regulation to be the touchstone of exemption under the Act. Congress did not provide that enterprises not already subject to regulation should be subject to the Administrator's authority; or, conversely, that the Administrator's authority should not extend to those enterprises which were already subject to regulation. As petitioner acknowledges, the existence of other price or rate regulation does not itself establish the right to exemption; similarly, it is clear on the face of Section 302 (c) that certain classes of enterprises which are ordinarily not subject to price or rate regulation are nevertheless exempted from the Act. In the second place, the existence of state regulation is

itself no guarantee that the purposes of the Price Control Act will be well served. For example, an increase in warehouse rates in one state which is inconsistent with the level of warehouse rates in other states insisted upon by the Price Administrator is no less detrimental—indeed, may be more detrimental—to effective price control because the increase is under the aegis of state or local authority. Congress was doubtless aware that the success of the stabilization program depended very largely upon a wise but firm accommodation of conflicting interests, frequently reflected in sectional or geographical differences. This accommodation is not furthered by making the Price Administrator's authority dependent upon state or local regulatory action.

Nor does the legislative history of the statute support the petitioner's proposition that Congress intended the scope of the exemption for common carrier and other public utility rates to be determined by the existence or nonexistence of state or local rate regulation. Discussions at the committee hearings and in the legislative debates indicate, it is true, recognition of the fact that for the most part the businesses exempted by this provision would be subject to state regulation. But they also indicate recognition that some businesses outside the scope of the public utility exemption would be subject to state regulation, and that some businesses not subject to such regulation would

nevertheless be entitled to the exemption.[10] Furthermore, in Section 1 of the amendatory Act of October 2, 1942, after the Administrator's interpretation of the exemption had been publicly established for several months, the phrase "common

[10] See Hearings before the House Committee on Banking and Currency on H. R. 5479, superseded by H. R. 5990, 77th Cong., 1st Sess. (1941) 626:

"Mr. PATMAN. * * * You include in this bill metals, chemicals, durable goods, and agricultural products, and * * * services * * * but it does not include transportation or utility rates.

"Mr. HENDERSON. No.

"Mr. PATMAN. That is quite a large item, and you said, as I understood you, that you were satisfied with the rate-making bodies in the States, and that that was the reason you did not ask that utility and transportation rates be included.

"Do I understand that correctly?

"Mr. HENDERSON. I did not mean to limit it to existing regulatory mechanisms both in transportation and utilities.

"What I said was that the transportation rates themselves were already under regulation by Federal and State agencies, and I also feel that that is not an item, *even in the absence of that regulation*, to be brought under commodity price regulation."

See also 87 Cong. Rec., November 24, 1941, at 9308, where the chairman of the House Committee on Banking and Currency, in explaining the bill, stated:

"The bill also provides explicitly in Section 302 (c) that nothing in the act is to be construed to authorize the regulation of compensation paid by an employer to any of his employees, or the regulation of rates charged by any common carrier, or other public utility, which are *usually* subject to adequate control by State or other Federal agencies. In cases of conflict between State regulation of enterprise of a nonpublic-utility character and Federal regulation under this bill, the Federal regulation would, of course, prevail." [Italics supplied.]

carrier or other public utility" was again used without qualification or definition.[11] During the debates on this measure the Senate was expressly told[12] that the Administrator had construed Section 302 (c) (2) of the Act as exempting from his authority a telephone company which was not subject to state regulation.[13] Legislative repetition of the phrase under these circumstances is persuasive indication of Congressional approval of the existing administrative construction.

[11] 56 Stat. 765, 50 U. S. C. App. § 961. The original lack of any supervision by the Administrator over "public utility" rate increases was deemed unsatisfactory, as the enactment of the October 2, 1942 statute indicates. But while the Administrator was given important functions in that field (see note 13, *infra*; cf. *Vinson* v. *Washington Gas Light Co.*, No. 396, present Term), the scope of the phrase "public utility" was left unchanged.

[12] 88 Cong. Rec., September 10, 1942, 7343–7346; Petitioner's Brief, Appendix A, pp. vii to xx.

[13] Under the Act of October 2 every common carrier or other public utility, whether regulated or unregulated by state or local law, is required to serve notice upon the Administrator before effecting rate increases above September 15, 1942, levels. Accordingly, the Administrator has consistently required the filing of such notices by all common carriers and public utilities regardless of whether their rates are subject to control by state or local authority (Procedural Regulation No. 11, 7 F. R. 9390). Thus the Administrator is assured of an opportunity not only of persuading unregulated carriers or utilities to refrain from effecting increases—as was done in the telephone case referred to in the Administrator's letter to Senator Norris (*supra*), n. 12)—but also of bringing suit in equity to restrain unreasonable rate increases by them, if necessary. Cf. opinion of the court below, R. 115.

The test elaborated in the dissenting opinion, although it depends essentially on local law, accords no weight to the existence of price or rate regulation; there are, however, additional considerations which render that test administratively inapt in the context of the Emergency Price Control Act. Judge Vinson's discussion of the meaning of the phrase "other public utility" as used in the Emergency Price Control Act concludes with this "definitive summary" (R. 129–130):

> * * *. This, then, is my exact position: If a business is (1) affected with a public interest; *and* (2) bears an intimate connection with the processes of transportation and distribution, *and* (3) is under an obligation to afford its facilities to the public generally, upon demand, at fair and non-discriminatory rates, *and* (4) enjoys, in a large measure an independence and freedom from business competition brought about either (a) by its acquirement of a monopolistic status, or (b) by the grant of a franchise or certificate from the State placing it in this position, it is for the purposes of the Price Control Act, as amended, a public utility, and subject to the exemption provisions of Section 302 (c).
>
> It is these four attributes which make up the bundle or the public utility formula to the extent which I have promulgated it. The formula is a limited one. It is designed only to provide an absolute test

> or standard by which one may *affirmatively* determine that a particular business *is* a public utility. I do not wish to be misunderstood as indicating that a business possessed of or operating under less than the total of these features may not be considered a public utility. My formula has no negative or exclusive implications. What I do say is that, at least, *any* business which *does* possess and practice and operate under each and all of these features, is by a preponderance of considered judicial opinion a business in the public utility class. * * * [Italics in original.]

In considering the impracticability of this test for the purposes of price control, it is of first importance to note the statement that the formula laid down "has no negative or exclusive implications". If the Administrator were to adopt such an "open-end" definition, doubt and confusion would be rampant in a large field of enterprise; effective enforcement would be frustrated because many businesses under some color of right would consider themselves public utilities. On the other hand, if the Administrator were to declare just which of these attributes are necessary in order to obtain public utility status, he would commit himself to the resolution of a host of complex questions, both of law and of fact, all unrelated to the real business of price control. At the very least, he would have to face the question whether the particular business concerned was sufficiently

"affected with a public interest" constitutionally to justify the type of legal obligation which the state imposes; and would have to scrutinize and differentiate many kinds of franchises. Thus, the Administrator, as incident to the task of price control, would be called upon to determine in any number of particular instances questions of state law which require the most painstaking examination of statutes and decisions, and questions of constitutional law which have produced some of the sharpest divisions of this Court and are not yet wholly laid at rest. Surely, the impracticability of such an undertaking is persuasive evidence that the Congress did not intend to impose it upon the Administrator, and persuasive argument against importing such a construction into the statute.

By interpreting the public utility exemption as applying to a specific group of businesses and by designating those businesses which it was believed Congress intended to include within the scope of the term, the Administrator has given to the exemption that clarity and precision which is eminently necessary both to those who administer the statute and to those who must obey it. In addition, the general principles that the interpretation of a statute by the agency charged with its administration is entitled to great weight and that in a statute of broad application exemptions are to be strictly construed, reinforce the conclusion that the Administrator should not be required to

abandon the interpretation which he has consistently followed for the nebulous alternatives that have been suggested.

II

APPLYING THE FOREGOING PRINCIPLE, THE ADMINISTRATOR CORRECTLY DETERMINED THAT WAREHOUSES AS SUCH ARE NOT PUBLIC UTILITIES WITHIN THE SCOPE OF THE "PUBLIC UTILITY" EXEMPTION

In giving specific content to the term "public utility" as used in Section 302 (c) (2) of the Act, the Administrator concluded that Congress intended the term to refer only to those businesses which have been generally and traditionally regarded as public utilities. As members of that group, the Administrator included enterprises furnishing to the public, gas, electricity, light, heat or power, telephone and telegraph services, and water. Warehouses were not included. We submit that the specific provisions of the Act, as well as general usage of the term "public utility," justify the conclusion of the Administrator and the court below that charges for warehousing services were not intended to fall within the statutory exemption.

The language and legislative history of Section 302 (c) provide persuasive evidence that Congress intended warehouse services to be subject to the Administrator's authority. By the definition in Section 302 (c) storage services are specifically enumerated as included within the term "com-

modity," maximum prices for which they may be established pursuant to Section 2 of the Act. It is unquestioned that public warehouses render the bulk of storage services (R. 43). The claim that the rates for such services were removed from the Administrator's authority by the public utility exemption must, therefore, impute to Congress a specific grant of authority with the one hand, and its virtual simultaneous removal with the other. Moreover, when storage services were called to the attention of Congress, the rates therefor were referred to only as subject to the maximum price authority established in the Act.[14] On the other hand, on those occasions when the public utility clause was the subject of discussion, the traditional public utilities, such as gas, electric, light and power, telephone and water companies were men-

[14] During the Senate hearings Mr. Henderson stated expressly that "warehousing" was one of the services which would be subject to regulation. Hearings before the Committee on Banking and Currency, U. S. Senate, on H. R. 5990, 77th Cong., 1st Sess. (1941) 121–122. The term "service establishment", in Section 302 (c), is considered in the Report of the Senate Banking and Currency Committee and stated to "include all establishments rendering services in connection with the use of goods, including such typical establishments as laundries, cleaners and dyers, and other such establishments listed as service establishments by the United States Census." S. Rep. No. 931, 77th Cong., 2d Sess. (1942) p. 16. The United States Census includes "warehousing" in its list of service establishments. Reports on Business, Census of Business; 1939, Vol. 3, *Service Businesses*, U. S. Dept. of Commerce, 16th Census (1940), p. 244.

tioned without any suggestion that warehousing rates might also be included.[15] This legislative background reflects a Congressional understanding that the public utility exemption would not apply to warehousing services.

This understanding of the term "public utility" as used in the Emergency Price Control Act is in accord with previous Federal legislation with respect to warehouses. By the United States Warehouse Act, certain aspects of the activities of warehouses storing agricultural commodities have been regulated.[16] In this statute the usual attributes of public utility regulation are conspicuously absent. Indeed, the administrative sanction provided—the suspension of licenses for unreasonably high charges—is utterly inconsistent with any notion "of securing for society those essential services which are furnished by public utilities."[17] Moreover, while Congress has had occasion to define and regulate many businesses as "public utilities,"[18] warehouses have never been defined or regulated as such.

In addition to these guides to the Congressional understanding of the term "public utility," a good

[15] 88 Cong. Rec., January 7, 1942, at 68; 88 Cong. Rec., September 10, 1942, at 7343, 7344.

[16] C. 313, 39 Stat. 486, *et seq.*, 7 U. S. C. §§ 241–273.

[17] Frankfurter, *The Public and Its Government* (1930), 81.

[18] See, *e. g.*, 49 Stat. 838, 15 U. S. § 79b (a) (5); 53 Stat. 48, 26 U. S. C. § 116 (d); 40 Stat. 893, 10 U. S. C. § 1287; 52 Stat. 891, 11 U. S. C. §§ 577, 578; 48 Stat. 1001, 19 U. S. C. § 81n; 52 Stat. 589, 48 U. S. C. § 315.

indication of the common understanding of the term may be found in the use made of it generally by the state legislatures. Cf. *Eagan* v. *Commissioner of Internal Revenue*, 43 F. (2d) 881, 883 (C. C. A. 5). This is particularly true because the term "public utility" has been defined by statute or constitution in forty-eight jurisdictions.[19] Forty-four jurisdictions include electric light and power companies in their definition of public utilities; forty-five jurisdictions include common carriers. A like number include telephone and telegraph companies; forty-two include water companies, while thirty-seven include gas companies in their statutory definitions. The treatment of warehouses by state legislatures is noteworthy by way of contrast.[20] Only three states include all warehouses in their statutory definition of public utilities; eight include sharply limited types of warehouses in their statutory definition. Thirty-six states, as well as Congressional statutes for the District of Columbia, make no mention of warehouses at all in their statutory definitions.[21]

[19] See Chart set forth as Appendix B, *infra*.

[20] See Appendix B.

[21] The chart attached to petitioner's brief as Appendix B is misleading. In the column headed "Warehouses" reference is made to 22 states which regulate the rates of certain warehouses. The inference is that such rate regulation constitutes a state classification of warehouses as "public utilities." The exercise of a state power to regulate the rates and

The opinions of the federal courts express the same understanding of the term as the overwhelming majority of the legislatures. In *Nebbia* v. *New York*, 291 U. S. 502, this Court differentiated public utilities from other businesses subject to state regulation, expressly enumerating those within the former category. After pointing out that the dairy industry was not "in the accepted sense of the phrase, a public utility" (p. 531), the Court went on to say (p. 534):

> In the same volume [as *Munn* v. *Illinois*] the court sustained regulation of railroad rates. * * * Plainly the activities of railroads, their charges and practices, so nearly touch the vital economic interests of society that the police power may be invoked to regulate their charges, and no additional formula of affection or clothing with a public interest is needed to justify the regulation. *And this is evidently true of all business units supplying transportation, light, heat, power and water to communities, irrespective of how they obtain their powers.* [Italics supplied.]

Substantially similar judicial recognition of the scope of the term "public utility" was expressed in *Pulitzer Publishing Company* v. *Federal Com-*

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charges of a particular business does not constitute such a business, in the conventional sense of the phrase, a public utility. *Nebbia* v. *New York*, 291 U. S. 502, 531. Furthermore, states are included in this column although only limited classes of warehouses are regulated.

munications Commission, 94 F. (2d) 249 (App. D. C.), where the court stated (p. 251):

> But we have never said that a radio broadcasting station is a public utility in the sense in which a railroad is a public utility. Generally speaking, that term comprehends any facility employed in rendering quasi public service such as waterworks, gas works, railroads, telephones, telegraphs, etc. * * *

Of course, the term "public utility" may even to the layman have many different connotations; this is indicated by various dictionary and encyclopaedia definitions.[22] However, the various sources already referred to indicate that the Administrator adopted the most generally accepted meaning of the term. It is also worthy of note, particularly in the context of price control, that the usage of the business community closely accords with the meaning adopted by the Price Administrator. Financial manuals have generally grouped under the heading of public utilities the same industries which the Price Administrator has considered within the public utility exemp-

[22] See, for example, the definitions of "public utility" in Webster's *New International Dictionary* (2d ed., unabridged); Winston's *Cumulative Loose-Leaf Encyclopaedia* (App.) 780; *Oxford Universal English Dictionary* (1937) 1614; *New Century Dictionary* (Vol. 2) 1423; Compton's *Pictured Encyclopaedia* (1942), Vol. 11, p. 364; *New International Encyclopaedia* (1930), Vol. 19, p. 347; and *Encyclopaedia Americana,* Vol. 22, pp. 778–779.

tion and have generally classified warehouses as industrials.[28] Thus, examination of all relevant sources leaves no serious question but that inclusion of warehouses within the group of businesses exempted as public utilities would have done violence to the statutory language and been contrary to the legislative intention.

CONCLUSION

For the foregoing reasons the judgment below should be affirmed.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
PAUL A. FREUND,
Special Assistant to the Attorney General.
HENRY M. HART, JR.,
Acting General Counsel,
NATHANIEL L. NATHANSON,
Associate General Counsel,
HARRY H. SCHNEIDER,
CARL H. FULDA,
Attorneys,
Office of Price Administration.

NOVEMBER 1943.

[28] Moody's *Manual of Public Utilities* (1942 ed.), pp. a3, a83–a91. See also Standard and Poor's *Trade and Security Index for 1941.*

APPENDIX A

EMERGENCY PRICE CONTROL ACT OF 1942, c. 26, 56 Stat. 23, 50 U. S. C. App., Supp. II, § 901 *et seq.*

Section 204 (d)

* * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. * * *

Section 302 (c)

The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided,* That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an em-

ployer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services.

1 State	2 Electricity, Light, Power	3 Gas	4 Water	5 Communications	6 Common Carriers	7 Heat and Refrigeration	8 Warehouses (a) No Warehouses Included	8 Warehouses (b) Certain Warehouses Included	8 Warehouses (c) All Warehouses Included	9 Others
Alabama	X	X	X		X	X	X			Pub wharves, docks
Arizona	X	X	X	X	X			Storage of cotton and wool.		
Arkansas	X	X	X	X	X	X	X			
California	X	X	X	X	X	X			X	Wharfage, "Every class of private corporations, individuals or associations of individuals hereafter declared by the Legislature to be pubile utilities."
Colorado	X	X	X	X	X		X			"every corporation now or hereafter declared by law to be affected with a public interest."
Connecticut	X	X	X	X	X		X			
Delaware [2]										
Florida: (a) Private Utilities			X	X	X		X			
(b) Municipal Utilities.		X					X			Reservoirs, sewerage, pumping stations, wells, distribution systems, intakes, purification works, collecting systems, treatment and disposal works, airports, hospitals, jails, golf courses.
Georgia	X	X		X	X		X			Docks
Idaho	X	X	X	X	X			Warehouses used in connection with carriers and agricultural produce.		
Illinois	X		X	X	X	X		Grain Warehouses.		Wharfingers

1 State	2 Electricity, Light, Power	3 Gas	4 Water	5 Communications	6 Common Carriers	7 Heat and Refrigeration	8 Warehouses (a) No Warehouses Included	8 Warehouses (b) Certain Warehouses Included
Indiana	X		X	X	X	X		
Iowa	X			X	X	X	X	
Kansas	X		X	X	X	X	X	
Kentucky	X	X	X	X	X		X	
Louisiana		X		X	X		X	
Maine	X	X	X	X	X			Warehouses used in connection with common carriers.
Maryland	X	X	X	X	X		X	
Massachusetts	X	X	X	X	X		X	
Michigan	X	X	X	X	X		X	
Minnesota: (a) Private Utilities.	X			X	X		X	
(b) Municipal Utilities.	X	X	X	X	X	X	X	
Mississippi	X	X	X	X	X		X	
Missouri	X	X	X	X	X	X	X	
Montana	X		X	X	X	X	X	
Nebraska				X	X		X	
Nevada	X		X	X	X	X		Warehouses used in connection with common carriers.
New Hampshire	X		X	X	X	X	X	
New Jersey	X	X	X	X	X	X	X	

[1] For statutory references see Appendix C.
[2] Delaware has neither statutory definition nor regulation.

Appendix B.—Analysis of State Statutory Definitions of "Public Utility"[1]

3	4	5	6	7	8			9
					Warehouses			
Gas	Water	Communications	Common Carriers	Heat and Refrigeration	(a) No Warehouses Included	(b) Certain Warehouses Included	(c) All Warehouses Included	Others
	X	X	X	X			X	
		X	X	X	X			Aeronautics.
	X	X	X	X	X			
X	X	X	X		X			
X		X	X		X			
X	X	X	X			Warehouses used in connection with common carriers.		Wharfingers.
X	X	X	X		X			
X	X	X	X		X			
X	X	X	X		X			Oil, river improvement, radio.
		X	X		X			"any other public utility."
X	X	X	X	X	X			Ice, stone quarries, public markets and slaughter houses, pavement and sewer works, docks, depots.
X	X	X	X		X			
X	X	X	X	X	X			
	X	X	X	X	X			Sewerage.
		X	X		X			
	X	X	X	X		Warehouses used in connection with common carriers.		Airships, radio, ditches, drainage systems, sewerage.
	X	X	X	X	X			
X	X	X	X	X	X			Sewers.

1	2	3	4	5	6	7	8			
							Warehouses			
State	Electricity, Light, Power	Gas	Water	Communications	Common Carriers	Heat and Refrigeration	(a) No Warehouses Included	(b) Certain Warehouses Included	(c) All Warehouses Included	
New Mexico	X	X	X			X	X			Any mechanical or chemical products.
New York	X	X		X	X	X	X			
North Carolina:										
(a) Private utilities.	X	X	X	X	X	X	X			
(b) Municipal utilities.	X	X	X				X			Schools, public markets, playgrounds, parks, plants, abattoirs, slaughter
North Dakota	X	X	X	X	X	X		Warehouses for food and agricultural products.		
Ohio	X	X	X	X	X	X	X			Messenger
Oklahoma	X	X	X	X	X		X			Cotton gin other sy owned o use."
Oregon	X		X	X	X	X	X			
Pennsylvania	X	X	X	X	X	X	X			Wharves.
Rhode Island	X	X	X	X	X		X			
South Carolina	X	X	X		X	X	X			
South Dakota				X	X				X	
Tennessee	X	X	X	X	X		X			"any other equipment dedicated under licenses by the subdivi
Texas	X	X	X	X			X			Sewerage.

[1] Appendix B.—Analysis of State Statutory Definitions of "Public Utility"

7	8			9
Heat and Refrigeration	Warehouses (a) No Warehouses Included	(b) Certain Warehouses Included	(c) All Warehouses Included	Others
X	X			Any mechanical plant processing or refining agricultural products.
X	X			
X	X			
	X			Schools, libraries, cemeteries, market houses, wharves, playgrounds, parks, garbage plants, armories, auditoriums, abattoirs, sewer systems, slaughter houses.
X		Warehouses for food and agricultural products.		
X	X			Messenger service
	X			Cotton gins, oil, sewerage, "or other systems by whomsoever owned or operated for public use."
X	X			
X	X			Wharves, sewerage
	X			
X	X			
			X	
	X			"any other like system, plant or equipment affected by and dedicated to the public use under privileges, franchises, licenses or agreements granted by the state or any political subdivision thereof."
	X			Sewerage

1	2	3	4	5	6	7	8			9
State	Electricity, Light, Power	Gas	Water	Communications	Common Carriers	Heat and Refrigeration	Warehouses (a) No Warehouses Included	(b) Certain Warehouses Included	(c) All Warehouses Included	Others
Utah	X	X	X	X	X	X		Warehouses storing grain or used in connection with common carriers.		
Vermont	X	X	X	X	X		X			
Virginia	X	X	X	X	X	X	X			Internal improvements, "and all other persons or corporations having the power of eminent domain."
Washington	X	X	X	X	X			Warehouses used in connection with transportation by water.		Wharfinger.
West Virginia	X	X	X	X	X		X			Radio, wharves and any business "which is or shall hereafter be held to be a public service."
Wisconsin	X		X	X		X	X			
Wyoming	X	X	X	X	X	X	X			
District of Columbia	X	X	X	X	X		X			
Total	44	37	42	45	45	25	37	8	3	

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APPENDIX C

Statutory References Underlying Appendix B

State	*Statutory Reference*
Alabama	Code (1940) Title 48, § 302.
Arizona	Code (1939) § 69–201; § 52–901.
Arkansas	Dig. Stat. (Pope 1937) § 2064 (d).
California	State Const. Art. XII, § 23; Gen. Laws (1937 Deering) Act No. 6386 § 2½.
Colorado	Stat. Ann. (1935) Ch. 137, §§ 3, 4.
Connecticut	Gen. Stat. (Rev. 1930) § 3577.
Delaware	
Florida	Stat. 1941, Title 25. Ibidem, § 180.07.
Georgia	Code Ann. § 93–307.
Idaho	Code Ann. (1932) §§ 59–128, 59–129; § 67–202.
Illinois	Ill. Stat. Ann. (Jones) § 112.027.
Indiana	Stat. Ann. (Burns' 1933), § 54–105.
Iowa	Code (1939), § 7874.
Kansas	Gen. Stat. Ann. (1935) §§ 66–104, 66–105.
Kentucky	Rev. Stat. (Baldwin 1942), § 278.010.
Louisiana	Gen. Stat. (Dart's, 1939) §§ 7912, 7980–7997, 7997.1–11.
Maine	Rev. Stat. (1930) Ch. 62, § 15.
Maryland	Code Ann. (Flack, 1939) Art. 23, § 349.
Massachusetts	Ann. Laws (1933) Ch. 159, 159A and B, 160–166.
Michigan	Stat. Ann. § 22.13 (6).
Minnesota	Stat. (1941) §§ 222.01; 237.04; 421.15; 452.01.
Mississippi	Code (1930) § 2455, Supp. (1938) Ch. 154–A.
Missouri	Rev. Stat. Ann. (1942) § 5578.
Montana	Rev. Code (1935) § 3881.
Nebraska	Comp. Stat. (1929) § 75–1302.
Nevada	Comp. Laws (1929) § 6106.
New Hampshire	Rev. Laws (1942), p. 243, § 2; p. 1206, §4.
New Jersey	Gen. Stat. Ann. § 48:2–13.
New Mexico	Stat. Ann. (1941), § 72–302, Const., Art. 11, § 7.
New York	Public Service Law § 2, Subdivision 22; Tax Law § 186a.
North Carolina	Code (1943) § 62–65.
North Dakota	Comp. Laws (1913) (1925 Supp.) § 4609–C–2.
Ohio	Gen. Code (Page) §§ 614–2–2a, 5415.
Oklahoma	Stat. Ann., Title 17, §§ 41, 151; Title 21, § 1265.1; Title 3, § 29.

STATUTORY REFERENCES UNDERLYING APPENDIX B—Continued

State	*Statutory Reference*
Oregon	Comp. Laws Ann. (1940) §§ 112-401, 114-101.
Pennsylvania	Pa. Stat. (Purdon), Title 66, § 1102, Subdivision 17.
Rhode Island	Gen. Laws (1938) Ch. 122, § 2.
South Carolina	Code of Laws (1942) § 8209 (c).
South Dakota	Code (1939) § 52.0201.
Tennessee	Tenn. Code Ann. (Williams 1932), § 5448.
Texas	Tex. Stat. (Vernon 1936) Title 32, Ch. 10.
Utah	Code Ann. (1943) § 76-2-1.
Vermont	Pub. Laws (1933) §§ 6085, 6706 IIIB.
Virginia	Code (1942) § 4087.
Washington	Rev. Stat. Ann. (Remington) § 10344.
West Virginia	Code (1943) §§ 2546, 2553.
Wisconsin	Stat. 1941, § 196.01.
Wyoming	Rev. Stat. (1931) § 94-101.
District of Columbia	D. C. Code (1940) § 43-108; 57 Stat. 974, Ch. 150, § 8.

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